FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-19

UNITED STATES OF AMERICA, PETITIONER

v.

DOMINGA SANTANA AND WILLIAM ALEJANDRO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JULY 3, 1975

CERTIORARI GRANTED OCTOBER 14, 1975

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[1] A copy of the transcript of the district court's oral decision granting Respondents' motion to suppress was filed as Appendix A to the petition for a writ of certiorari (pp. 1a-6a). The judgment of the court of appeals and the court of appeals' denial of the government's petition for rehearing and suggestion of rehearing *en banc* were reproduced as Appendix B (p. 7a) and Appendix C (p. 8a) to the petition.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 74-502

vs.

PATRICIA McCAFFERTY, DOMINGA SANTANA AND WILLIAM ALEJANDRO

RELEVANT DOCKET ENTRIES

1974	
Aug. 27	True bill.
Sept. 6	PLEA: NOT GUILTY to Count #1, as to deft McCafferty; deft allowed 15 days to file motions. [TGL]
Sept. 19	PLEA: NOT GUILTY as to Count #2, as to deft Santana; deft allowed 30 days to file motions. [EEN]
Sept. 19	PLEA: NOT GUILTY to Count #3, as to deft Alejandro; deft allowed 30 days to file motions. [EEN]
Sept. 26	Appearance of Mark A. Lublin on behalf of deft Alejandro, filed.
Oct. 18	Deft Santana's motion for relief from illegal search and seizure, with memorandum of law in support thereof, filed.
Oct. 21	Deft Alejandro's motion for the suppression of evidence obtained through illegal search and seizure, with memorandum of law in support thereof, filed.
Oct. 25	Govt's motion to dismiss deft Alejandro's motion for the suppression of evidence obtained through illegal search and seizure, filed.
Oct. 25	Govt's motion to dismiss deft Santana's motion for relief from illegal search and seizure, filed.
Oct. 29	Deft Alejandro's reply to Govt's motion to dismiss deft's motion for the suppression of evidence obtained through illegal search and seizure, filed.
Oct. 30	Deft Santana's reply to Govt's motion to dismiss deft's motion for relief from illegal search and seizure, filed.

Oct. 31	ORDER [dated 10-30-74] that the motion of deft Santana for relief from illegal search and seizure is DENIED for the reason that it has not been filed in accordance with the provisions of Local Rule 11; leave granted to file in accordance therewith, filed.
	11-1-74 Entered & copies mailed.
Oct. 31	ORDER [dated 10-30-74] that the motion of deft Alejandro for suppress of evidence obtained through illegal search and seizure is DENIED for reason that it has not been filed in accordance with local Rule 11; leave is granted to file in accordance therewith, filed.
	11-1-74 Entered & copies mailed.
Nov. 11	Govt's answer to deft Santana's motion for relief from illegal search and seizure, with memorandum in support thereof, filed.
Nov. 11	Govt's answer to deft Alejandro's motion for the suppression of evidence obtained through illegal search and seizure, with memorandum in support thereof, filed.
Nov. 11	Deft Alejandro's re-filed motion for the suppression of evidence obtained through illegal search and seizure, with memorandum of law in support thereof, filed.
Nov. 12	Deft Santana's re-filed motion for relief from illegal search and seizure, with memorandum of law in support thereof, filed.
Nov. 12	HEARING SUR motion of deft Alejandro re: suppression of evidence and sur motion of deft Santana re: relief from illegal search and seizure; witnesses sworn; adjourned until 11-13-74.
Nov. 12	CHANGE OF PLEA: GUILTY to Count #1, as to deft McCAFFERTY; pre-sentence report ordered; bail continued.
Nov. 13	CONTINUED HEARING SUR defts Santana and Alejandro's motions to suppress: motion of deft Alejandro for suppression of evidence is GRANTED; Motion of deft Santana for relief from illegal search and seizure is GRANTED.
Nov. 19	Transcript of testimony of Hearing re: motions to suppress of 11 filed.
Dec. 10	Govt's notice of appeal, filed.
Dec. 10	Copy of Clerk's notice of appeal, filed.

In the United States Court of Appeals for the Third Circuit

Case No. 74-2275

UNITED STATES OF AMERICA

vs.

PATRICIA McCAFFERTY, DOMINGA SANTANA AND WILLIAM ALEJANDRO

RELEVANT DOCKET ENTRIES

Date	Proceedings
1974	
Dec. 19	Copy of Notice of Appeal, rec'd. December 12, 1974, filed.
	Record, rec'd. December 18, 1974, filed. (trans of testimony of hear re: motions to suppress filed in DC on 11/19/74).
	Order (Clerk) directing that if the transcript is desired and has not been filed, it shall be ordered forthwith, with the proper arrangements for payment to be made; directing the court reporter to file the transcript on or before Jan. 20, 1975; directing appellant's brief and the appendix be filed and served within 30 days of the filing of the transcript in the DC, or within 30 days of the date of this order, whichever is later; directing appellee's brief be filed and served within 21 days after appellant's brief and the appendix are filed and served and directing the Clerk of the DC to deliver a copy of this order to the court reporter, filed.
	Certified copy of above order to C of DC and Ct. Rep.
Dec. 30	Appearance of Thomas J. McBride, for appellant, filed.
1975	
Jan. 15	Appearance of Dennis H. Eisman, Esq.; Needleman, Needleman, Tabb & Eisman, Ltd. for appellee, Dominga Santana, filed.
Jan. 20	Brief for appellant and appendix, filed. (7 cc.). Certificate of service by mail on January 20, 1975 appears on Page 20 of brief.
Feb. 7	Brief for appellee, filed. Certificate of service by mail on February 10, 1975 appears on last page of brief.

Feb. 25.....First Supplemental Record (Nos. 28/30), filed.
Mar. 6.....Order (*Aldisert*, C.J.) dated March 5, 1975 directing 10 minutes oral argument time for each side, filed.
Mar. 21.....Argued. Coram: Aldisert, Gibbons and Garth, C.J.
Mar. 21.....Judgment order, (*Aldisert*, Gibbons and Garth, C.J.) affirming the judgment of the District Court, filed.
Apr. 4.....Motion by appellant for a 21-day extension of time within which to file a petition for rehearing, from its present due date of April 4, 1975 to and including April 25, 1975, filed. (4 cc.). Certificate of service attached.
Apr. 8.....Order (*Aldisert*, C.J.) granting appellant's motion for a 21-day extension of time within which to file a petition for rehearing, from its present due date of April 4, 1975 to and including April 25, 1975, filed.
Apr. 25.....Petition for rehearing filed. (11 cc.). Certificate of service attached.
May 16.....Certified judgment-order in lieu of formal mandate issued.
May 16.....Record and First Supplemental returned to C. of D.C.
May 8.....Order (Seitz, Ch.J., Van Dusen, *Aldisert*, Adams, Gibbons, Rosenn, Hunter, Weis and Garth, C.J.) denying petition for rehearing.
May 20.....Receipt for record from Clerk of D.C., filed.
June 2.....Copy of letter dated May 30, 1975 to Honorable Robert H. Bork, Solicitor General of the U.S., advising that Supreme Court extended time for filing of petition for writ of certiorari to and including July 7, 1975, received from Clerk of S.C.
July 10.....Notice of filing on July 5, 1975 of petition for writ of certiorari, received from Clerk of S.C., filed (S.C. No. 75-19).

In the United States District Court for the Eastern District of Pennsylvania
Criminal No. 74-502
UNITED STATES OF AMERICA
v.
PATRICIA McCAFFERTY, DOMINGA SANTANA AND WILLIAM ALEJANDRO
Charge: Distribution of and possession with intent to distribute a narcotic drug controlled substance.

INDICTMENT

COUNT I

The Grand Jury charges:

On or about the 16th day of August, 1974, at Philadelphia, in the Eastern ict of Pennsylvania, PATRICIA M3C(FF5896, knowingly and intention-District of Pennsylvania, PATRICIA McCAFFERTY, knowingly and intentionally did unlawfully distribute about 42 grains of Heroin, a schedule I narcotic drug controlled substance.

In violation of Title 21 United States Code, Section 841.

COUNT II

The Grand Jury further charges:

On or about the 16th day of August, 1974, at Philadelphia, in the Eastern District of Pennsylvania, DOMINGA SANTANA, knowingly and intentionally did unlawfully possess with the intent to distribute about 587 grains of Heroin, a schedule I narcotic drug controlled substance.

In violation of Title 21 United States Code, Section 841.

COUNT III

The Grand Jury further charges:

On or about the 16th day of August, 1974, at Philadelphia, in the Eastern District of Pennsylvania, WILLIAM ALEJANDRO, knowingly and intentionally did unlawfully possess with intent to distribute about 54 grains of Heroin, a schedule I narcotic drug controlled substance.

In violation of Title 21 United States Code, Section 841.

A true bill:

/s/ RICHARD B. TILLSON,
Foreman.

/s/ ROBERT E. J. CURRAN,
United States Attorney.

[TRANSCRIPT OF SUPPRESSION HEARING]

[TESTIMONY OF OFFICER MICHAEL GILLETTI]

* * * * * *

11 DIRECT EXAMINATION

By Mr. McBRIDE:

Q. Officer Gilletti, by whom are you employed?

A. By the Philadelphia Police Department.

The COURT. Keep your voice up, please.

By Mr. McBRIDE:

Q. And in what capacity?

A. I work as an undercover agent with the narcotics unit.

Q. How long have you been working with the narcotics unit?

A. A little over two years, sir.

Q. Were you working on the date of August 16, 1974?

A. Yes, sir, I was.

Q. Did you have occasion on that day to take part in an investigation concerning the three defendants in this case?

A. Yes, sir, I did.

Q. Would you relate to the court what part you took
12 in that investigation?

A. Yes, sir. Your Honor, on Friday, August 16th of this year——

The COURT. You can speak to Mr. Munoz; you don't have to look at me. All right?

The WITNESS. Yes, sir.

At approximately 6:35 P.M., I made a telephone call to No. DA-4-2328. At that time I had a telephone conversation with one Mrs. Patricia McCafferty in reference to my purchasing a bundle of heroin. That number was given to me by Mrs. McCafferty on an occasion before this date or the purpose whenever I wanted to purchase heroin to call that number.

At that time I told Mrs. McCafferty I wanted to purchase a bundle.

She says, "O.K., it is going to cost you $115 and we will go down to Mom Santana's for the dope."

At that time I told Mrs. McCafferty that Mom's house is pretty hot right now and it is being watched by the police.

Mrs. McCafferty says that Mom moved, she don't live on Sixth Street any more; she lives at 2311 North Fifth, around Fifth and Dauphin, and that the police don't know that Mom is living there, everything is cool.

At the conclusion I agreed——

The COURT. Just a moment. Take your time.

Very well, proceed, Officer Gilletti.

The WITNESS. At that time I agreed to pick Mrs.

13 McCafferty up at Fifth and Ashdale Streets. I hung up the telephone.

I had a conversation with Sergeant Pruitt, 8549, who was my supervisor at the unit.

The COURT. Could I just interrupt a minute?

Is there a witness in the courtroom?

Mr. McBRIDE. I don't know who that is, sir.

The COURT. All right. The officer pointed. I don't know if he pointed to this person or not.

All right, go ahead.

The WITNESS. I told Sergeant Pruitt of the conversation that I had with Mrs. McCafferty. I told him that I had a bundle buy set up and I further told him that I had $110 that I had between myself and Officer Dais, that I was going to record the serial numbers for the purchase.

The COURT. All right, now, hold it.

The WITNESS. I then took five $20 bills and one $10 bill of our own money, I initialed each bill on the forehead with the initials "M.G.," and then we recorded each serial number on a 3 by 5 index card. I at that time gave the card to Sergeant Pruitt.

Sergeant Pruitt got a back-up team and he said that they were going to trail me to find where we buy the dope and make an arrest from there if that was the case.

At approximately 7 P.M. I left the unit, 22nd and Hunting Park. I drove over to Fifth and Ashdale Streets. I met
14 with Mrs. McCafferty.

She got into my automobile and directed me to drive to the area of Fifth and Dauphin. I pulled up on the southwest corner of Fifth and Dauphin. Mrs. McCafferty asked me for the money. I gave her the $110. She counted it and then she told me, "You are short $5. I told you $115."

I then told her that that was all I had, and she says, "O.K., I will go in and see if Mom will let me go for $5."

I gave her the money. She got out of the automobile. She walked to 2311 North Fifth Street. There were a few Puerto Rican kids standing outside. She patted them on the head and then she had a conversation with Alejandro who was sitting on

the steps. Alejandro and McCafferty got up and walked into 2311 North Fifth Street.

At approximately five minutes later, Mrs. McCafferty come out. About five minutes later, Mrs. McCafferty came out of the house. She walked directly back to my automobile and she got in. She said, "O.K., let's go."

So I said, "Well, do you have the dope?"

She said, "I have it."

So I said, "Well, I would like to see it before we leave."

I started to pull out of the parking spot north on Fifth Street. Mrs. McCafferty reached down into her bra. She took out a tinfoil package, opened it up, and handed me
15 several glasine packets of a brownish-white powder.

At that time I pulled over to the side—the other police were waiting in the are—I identified myself to Mrs. McCafferty as a police officer by showing her my badge and identification. I told her she was under arrest for illegal sale of heroin and then I warned her of her constitutional rights. At that time I told her we were going to send the police back to 2311 North Fifth Street and I wanted to know where the money was so that we may recover it. She then said, "Mom has the money."

Agent Pruitt pulled up alongside of me, along with other members of my unit. I showed them the bundle of heroin and I told them, "Mom Santana has the money."

They then went directly back to 2311 North Fifth Street.

Myself and Policeman Jumper proceeded up the narcotics unit. The items that I purchased I placed on Property Receipt No. 543956 and I submitted those items to the Police Chemical Lab for analysis.

Mr. McBride. Cross examine.

The Court. Mr. Lublin?

* * * * *

CROSS EXAMINATION

22 By Mr. Eisman:

Q. Officer Gilletti, you had made prior buys from Miss McCafferty; is that correct?

A. That's correct, sir.

Q. And in relation to this incident on August 16, when was the last time you had made a purchase from her?

A. I can tell you.

The Court. Yes, refer to anything you must and keep
23 your voice up, please. Take your time.

A. The last purchase I made from Miss McCafferty, Counsel, was on Tuesday, July 9, of this year.

By Mr. Eisman:

Q. And you had made a purchase, other purchases, before that also, had you?

A. That's correct, Counselor.

Q. When were they?

A. I made one other.

Mr. McBride. Objection. I fail to see the relevance of that to this particular issue at hand.

The Court. I will permit it within reason. It seems to be going somewhat far afield, but his credibility is in issue. Objection overruled.

A. The first purchase I made from Miss McCafferty, Counsel, was on June 20 of this year.

By Mr. Eisman:

Q. And you made how many purchases altogether?

A. I made two and counting today is three.

Q. Had any other officers working with you made any other purchases from her?

A. Policeman Jumper made a purchase off the defendant prior to July—June 20, but I don't have that report.

Q. But you were aware of that on August 16; isn't that correct?

A. Yes, sir, I was.

24 Q. As a matter of fact, had you obtained warrants for her arrest for those three prior sales or had Officer Jumper obtained warrants?

A. I had several still working on the defendant and in the area.

Q. But you had knowledge that she had sold you heroin on three prior occasions, you or the other police, three prior occasions, on August 16; isn't that correct?

A. I certainly had, yes.

Q. And I assume that prior to August 16 you were aware that the substance which she had sold you was heroin; is that correct?

A. That's correct. That's why I returned to her.

Q. Now, on August 16 when you called her, what was the purpose of your call?

A. The purpose of the call was to purchase a bundle of heroin.

Q. And whom did you want to purchase it from?

A. Whom did I want to purchase it from? From the defendant. That's why I called her.

The COURT. The defendant, McCafferty?

The WITNESS. Mrs. McCafferty, that's correct.

The COURT. All right.

By Mr. EISMAN:

Q. And at that time what did she tell you?

A. She told me that, "We can get the bundle. It is going to cost you $115."

Q. And did she tell you where she was going to get it?

25 A. Yes, she did.

Q. And where did she tell you she was going to get it?

A. She told me we were going to Mom Santana's house at 2311 North Fifth Street, in the area of Fifth and Dauphin.

Q. Now, you knew Mom Santana, didn't you?

A. I certainly—yes, sir, I did.

Q. How did you know her?

A. From prior investigations involving narcotics.

Q. As a matter of fact, had you been in that house prior to that day?

A. No, sir, I wasn't.

Q. Were other police that you knew or were aware of in that house prior to August 16?

A. No, I wasn't. I was there once but I wasn't in the house. Two days prior to this purchase, I couldn't get into the house. There was somebody outside that knew me as a police officer.

Q. Oh. So you had been to this house and you knew Mom Santana was there but you couldn't get in there; is that right?

A. No, sir, I was told that two days prior. I had no knowledge that she was there. As far as we were concerned, you know, we didn't know her whereabouts.

Q. Well, somebody had told you she was there, didn't they?

A. Mrs. McCafferty told me.

Q. Well, you had been at 2311 North Fifth Street two days prior with an informant, hadn't you?

26 A. That's correct. I just stated that I said at that address——

Q. According——

The COURT. Let him finish the answer.

You just stated that and what?

The WITNESS. I went to that address. I did not go into the house. I did not see Mom Santana on that date.

By Mr. EISMAN:

Q. But an informant had told you she was there, didn't he?

A. He had suggested that's where she was but it is—yes, sir, that's correct.

Q. This is one of your police informants had told you; is that right?

A. He did, yes, sir.

Q. The only reason you didn't go, because there were some people there who knew you to be a policeman; is that right?

A. Yes.

Q. Now, had Mrs. McCafferty ever sold you anything purporting to be heroin that wasn't heroin on those other three occasions? You or the other three officers?

A. No, she didn't.

Q. And when you had this discussion with her with regard to purchasing the narcotics on August 16, you believed that to be true, didn't you?

A. I am sorry, Counselor, I didn't understand.

27 Q. You believed Miss McCafferty's statement as to where she was going to get these items to be true, didn't you?

A. I had an idea but I wasn't sure because she had stated before we were going somewhere and we ended somewhere else. That's why we weren't prepared for this.

Q. Well, she told you that she was going to go to 2311 North Fifth Street, didn't she?

A. That's all she did was tell me, yes, sir.

Q. And she told you that's where Mom Santana lived; is that right?

A. She told me that, yes.

Q. And you knew from an informant two days prior that the informant had told you that this is where Mom Santana lived; is that correct?

A. No, sir. Again it was just somebody told me. I had no knowledge that she was in fact there.

Q. Didn't the informant tell you that this is where Mrs. Santana lived?

A. Yes, sir.

Q. And that was two days prior to this incident?

A. Correct.

Q. And you had gone to the house for the purpose of purchasing heroin because you believed her to live there, isn't that right, two days prior to the arrest?

A. I was going to find out if she did in fact live there,
28 yes, sir, but I didn't.

Q. You didn't because there was somebody there that knew you to be a policeman?

A. That's correct.

Q. O.K. Now, when you went there with Miss McCafferty on that night you made certain arrangements; isn't that correct?

A. Arrangements insofar as where to meet her, yes.

Q. O.K. You met her at an area close to this house at 2311 North Fifth Street; is that right?

A. No, sir.

Q. Where did you meet her?

A. I met her a half a block from her residence, at Fifth and Ashdale.

Q. And then she drove you there; is that right?

A. She directed me to Fifth and Dauphin.

Q. And you knew where you were going because she had told you that Mom lived at 2311 North Fifth Street; is that right?

A. Yes, I was hoping, yes. I had an idea that's where we were going.

Q. In fact, you had made certain arrangements, you had certain moneys, Xeroxes, is that correct, before you left the police station?

A. I pre-recorded certain money before we left and also marked money.

Q. And you informed your superiors as to what you
29 were doing, where you were going?

A. Where we intended to go, yes.

Q. And you made arrangements at the police station as far as setting up back-up teams?

A. That's correct.

Q. And what was the plan if you did make this purchase?

Mr. McBride. I object to that, sir. The issues before this court are the facts as to what happened on that day, not perhaps what would or would not have been had something else happened.

Mr. Eisman. Your honor, I will show the relevancy of this line of questioning.

The Court. I will permit it.

Mr. Eisman. Thank you.

The Court. Within limits.

By Mr. Eisman:

Q. What were the plans you made if you in fact did make this purchase that Miss McCafferty had told you?

A. The plans were to make the purchase and then make an arrest following that purchase and also to confiscate the money which was used.

Q. O.K. Now, what exactly were the plans?

A. Just as I stated to you. I did not make the plans insofar as getting down and saying, "This is what we are gong to do."

Q. O.K. You had a discussion with your sergeant; isn't that right?

30 A. That's correct.

Q. And you discussed the purchase of the drugs; right?

A. Yes, sir.

Q. And what did you say, what did he say, with regard to if the sale did go down, so to speak?

A. I simply went to Sergeant Pruitt as I always do and I

told him, "Sarg, I got a bundle buy set up. I would like a back-up team because if it goes down, you know, it is going to be a bubble," what we call a buy bust, an arrest right there on the scene, and from there, my known procedure was to let the sergeant handle how he was going to back me up or what he was going to do insofar as backing me up.

Q. Didn't you explain to him what the circumstances of the buy were supposed to be, that McCafferty was supposed to buy from Santana?

A. Yes, as I stated earlier, I wrote certain serial numbers on a 3 by 5 index card. I put a short story which I will read if counsel wants it and I signed it and gave it to my sergeant.

Q. A short what?

A. A story in reference to where this money was being pre-recorded.

Q. O.K. Why don't you read it?

A. It just reads, "This list is given to Sergeant Pruitt, No. 8549, by Policeman Gilletti, 2078, for heroin purchase money to be used on 8–16–74 at approximately 7:30 P.M."

In parentheses it also reads, "(May be going to 2311
31 North fifth Street.)"

Q. I see. So you knew——

The COURT. Can we have that marked G–1 for identification, please?

Mr. EISMAN. Maybe we could mark it D–1.

The COURT. All right.

(Index card was marked Exhibit D–1 for identification.)

By Mr. EISMAN:

Q. Now, did you discuss with Sergeant Pruitt as to how the money was to be recovered?

A. I don't understand the question, Counselor.

Q. Well, the money was supposed to be going to 2311 North Fifth Street according to that story or might be going.

A. Maybe, right.

Q. Right. And did you discuss with Sergeant Pruitt how that money was going to be recovered?

A. We had no idea until the actual circumstance, you know.

The COURT. So the answer is "No"?

The WITNESS. No, sir, I didn't know.

By Mr. EISMAN:

Q. You made no plans; is that right?

A. No, sir.

Q. Now, in this report does this report say anything about seeing Alejandro on the steps of that house or anybody else on the steps?

32 The COURT. Can you tell us without reading it? Have you memorized that report?

The WITNESS. No, sir, I didn't. I read that once.

The COURT. If you want him to read the contents of a seven-page report which is single spaced typing, you had better show it to him. It either does or doesn't.

Mr. EISMAN. I will withdraw the question.

The COURT. All right. Next question.

By Mr. EISMAN:

Q. Were you in radio communication with your fellow police officers?

A. No, sir.

The COURT. At which time?

By Mr. EISMAN:

Q. At the time you were in the car with Miss McCafferty?

The COURT. The first time or the second time or either time?

Mr. EISMAN. Well, either time.

A. No, sir.

By Mr. EISMAN:

Q. And where did you arrest McCafferty?

A. Where did I arrest her?

Q. Yes.

A. On North Fifth Street. It was probably the end of the
2600 block North Fifth, the beginning of 27. I drove about a block or a block and a half from the time that she got
33 into the car. It is when she handed we the bundle and I immediately pulled over to the side.

Q. All right. Now, at that time did you see anybody from the house watching you?

The COURT. What house?

By Mr. EISMAN:

Q. The house at 2311 North Fifth Street?

A. Did I see them watching me?
Q. Yes.
A. No, sir.
Q. Did you indicate to your fellow officers that anybody in the house knew that you had arrested Miss McCafferty?
A. No, sir. I simply pulled up and showed him the bundle and told him that Mom Santana has the money.
Mr. EISMAN. I have no other questions.
The COURT. Mr. Lublin?
Mr. LUBLIN. Yes, sir.
The COURT. Any questions that would not be repetitious will be permitted
Mr. LUBLIN. I don't believe I will be repetitious, Your Honor.
By Mr. LUBLIN:
Q. Prior to this time you made three—let me preface; I want to make a short statement first and then I am going to get into a question that will follow—prior to this time you had
34 made three purchases from Mrs. McCafferty. During any of those three purchases did you ever discuss Mom Santana or any of Mrs. McCafferty's sources of drugs?
The COURT. You mean prior to this time he made two or prior to this time he made three?
Mr. LUBLIN. I am sorry, the two prior, that he had made prior to this. You are exactly right, Your Honor.
The COURT. I don't want to change your question. You might have some purpose in saying that.
Mr. LUBLIN. No.
The COURT. But I thought maybe you misunderstood.
Mr. LUBLIN. I was in error, Your Honor.
The WITNESS. All right.
The COURT. Yes, sir.
By Mr. LUBLIN:
Q. You had discussed Mom Santana?
A. We didn't discuss it. Mrs. McCafferty mentioned, you know—I had a habit when we copped, I said, you know, "Where are we going" or, "Who do we cop from," and one other occasion, she did mention Mom Santana but she didn't say "Mom Santana"; she said, "Mom at Sixth and Glenwood," which was a different location, a different time.

Q. Now, would it be fair to say that at this time you were also conducting an investigation of Mom Santana?
A. Myself and my partner were working the area.
35 Mom Santana was part of that area, yes, sir.
Q. O.K. And you had received prior information concerning the sale of drugs by Mom Santana?
A. Numerous occasions, yes, sir.
Q. Was any of this information received from police informants?
A. Much of the information was received in that manner, yes, sir.
Q. In fact, you had known where Mom Santana lived, the prior address, two days before this incident occurred; isn't that correct, Officer?
A. As I just stated shortly ago, no, sir, I didn't. I was told that she lived there but I had no——
Q. Well, when you said earlier you were told, were you told by a police informant?
A. Yes, sir, I was.
Q. Was that informant a reliable informant to the best of your knowledge?
A. I don't recall.
Mr. MCBRIDE. I object to this sir. At this point I think the officer has made his position clear that he did not know it of his own knowledge. He did not know it because someone had told him, and whether that person is reliable or unreliable I don't think is really relevant to the issue of whether he in fact knew it or didn't know it. He stated he did not have a chance to verify it but he had had reports, now, reliable or unreli-
36 able. That's as much as he had.
The COURT. Yes. What would be the purpose of this, Mr. Lublin?
Mr. LUBLIN. May we see Your Honor at side bar? I would be more than happy to give the reasons.
The COURT. No, it won't be necessary at side bar because there is no jury here, but secondly I want to make sure the defendants understand what is being said, too.
What would be the purpose of knowing if an informant who

gave this witness some general information about presumably defendant Santana might be a reliable or unreliable informant?

Mr. LUBLIN. Could the witness be excused while I explain the reason, Your Honor?

The COURT. No.

Mr. LUBLIN. O.K.

The COURT. I think the witness has said several times he didn't know if this lady lived there or not. He suspected that she might be there. But presumably his transaction was not with her but with Defendant McCafferty. So whether or not Mrs. Santana or Mom Santana was there or was not there or lived there or did not live there or leased there or was a lessor or lessee or a squatter or whatever at those premises doesn't seem to bear upon any relevant issue as to the arrest of Mrs. McCafferty which is all we have heard about so far, so with that frame of reference, what is the importance of the question as to the informant?

37

Mr. Eisman, do you want to speak to it? I mean, you may have a reason to advance that Mr. Lublin would want to share?

Mr. EISMAN. Your Honor, the reason I had asked that line of questioning—and I thought I had got the answer that I was seeking—the reason I think this is relevant is to whether this officer had reason to credit his other informant, that fact plus the residence of Mr. Santana when he went there to attempt to make a buy two days prior.

The COURT. Well, he went because Mrs. McCafferty said, "That's where we are going." That's his testimony. She said, "We are going to 2311 North Fifth to complete this transaction and that's where Mom Santana is," but that's the basis of his testimony.

Mr. EISMAN. But this is relevant to what knowledge he had as far as ths premises which he marked on D–1 and which he relates in his 49 report that an informant had told him that Mom Santana was living there even before Mrs. McCafferty told him that she was living there.

The COURT. Is that so, you understood that she lived there before Mrs. McCafferty told you that?

The WITNESS. No, sir, Your Honor. I said that I was told that but I had no personal knowledge that she did in fact live there.

The COURT. And who told you that?

38

The WITNESS. A police informant.

The COURT. And did you have any reason to believe that that was a true statement or you were unsure or you believed it was untrue?

The WITNESS. I had no reason to believe one way or the other. It was the first time myself I ever worked with that particular informant.

The COURT. Did you rely on that statement at all in carrying out your duties in connection with this particular episode?

The WITNESS. No, sir.

The COURT. All right. Objection sustained.

* * * * *

50

By Mr. LUBLIN.

Q. At 6:35 P.M. you made a phone call to Patricia McCafferty; is that corect?

A. Yes, sir.

Q. O.K. Where did you make this phone call from?

A. From the Narcotics Unit Headquarters, 22nd and Hunting Park Avenue.

Q. Did anyone listen in on that conversation?

The COURT. To your knowledge?

By Mr. LUBLIN.

51

Q. To your knowledge?

A. To my knowledge, no, sir.

Q. You informed her that you wished to purchase hereoin; is that correct?

A. That is correct.

Q. And she told you she would take you to Mom Santana's house?

A. That is correct.

Q. What did you then inform her or what did you next say to her?

A. I don't recall exactly. As far as I know, nothing, except where to pick her up at.

Q. O.K. Did you tell her that Mom's house was being watched by the police?

A. Oh, yes, I said that, that's correct.

Q. Where did you get the information that Mom's house was being watched by the police?

A. I was part of the police that was watching Mom's house at 6th and Glenwood Avenue.

Q. For how long a period were you watching that at 6th and Glenwood?

A. I don't recall, any time I was in the area. It is just a normal complaint that we get all the time.

Q. I am sorry, Officer, I didn't hear you?

A. It is a complaint, whenever I was there.I made no specific effort to go out and watch that one particular home. I work on the buy scene, Counsel. I don't just take out a search
52 warrant and hit the place. I work on it until I think I can get into the house and make a purchase from it.

Q. Well, at that time, you told her that the place was being watched by the police. That would be other policemen also; isn't that correct?

A. That's correct.

Q. O.K. Would it be fair to say that a constant surveillance was being held on Mom Santana's house?

A. No, sir.

Q. And it would be a hit or miss, as you have described it to us earlier?

A. As far as I am concerned. There may be agents—there are other agencies watching her but I don't know of any constant surveillance. I don't know how they go about what they are doing.

Q. Now, you had stated earlier that you received a number of complaints about Mom Santana; is that correct?

A. During the past two years, yes, sir.

Q. How many of those complaints were from informers?

A. I don't recall.

Q. You don't recall at all?

A. No, sir.

Q. O.K. Well, so that we can focus a little better, would it be more than five or less than, five to the best of your knowledge?

A. I have no idea, Counselor.

Q. No idea whatsoever?

53 A. No, sir.

Q. All right. Can you think of any specific information that you received pertaining to Mom Santana from any informant?

Mr. McBride: I object to that, sir. It is broad. We are covering a two-year period. Any information he received from any other informants on Mom Santana? That's a terribly broad question.

Mr. Lublin. I will make it more specific.

The Court. Yes, would you rephrase it? It is rather broad.

By Mr. Lublin:

Q. O.K. Any information pertaining to drugs being on the premises or being sold by Mom Santana within one month of this arrest?

The Court. Now, I wonder if I could just hesitate a moment. We have to be careful of the premises we are speaking of. Is it 2511 North Fifth or is it Sixth and Glenwood? I assume they are different.

Mr. Lublin. Yes, sir. Any premises.

The Court. 2311 North Fifth or Sixth and Glenwood, and I assume they are different.

The Witness. They are.

By Mr. Lublin:

Q. Any premises in which Mom Santana also known as Dominga Santana lived or worked or—in quotes—allegedly
54 conducted sales or possession of heroin.

Mr. McBride. I object to that, sir. I don't think that where she worked has any relevance and I don't think the Sixth and Glenwood property has any relevance here.

The Court. Well, here is an issue here. This was a warrantless arrest; is that correct?

Mr. McBride. That's correct, yes, sir.

The Court. So there is an issue of probable cause to arrest the defendant, Santana.

Am I correct there, I assume for this record that Mom Santana is the same as the defendant named in the indictment or is this a different person?

The WITNESS. No, the same person.

Mr. LUBLIN. He had testified that she has been called Mom Santana and that is referring to Dominga Santana, the defendant here today.

The COURT. All right. Well, then, if that's so, I think the question is proper, Mr. McBride, because among several elements I have to consider, one important one is a clear showing of probable cause, and I would permit that.

You may answer, Officer Gilletti.

Objection overruled.

Repeat the question.

A. And the question is what, sir? I heard——

The COURT. What was the question?

55 By Mr. LUBLIN:

Q. What information did you receive within one month of this arrest pertaining to Dominga Santana?

A. I still—specifically I can't tell you what information. I received information that Mom Santana, who is the defendant, who I have seen through photographs, was dealing in heroin at the location of Sixth and Glenwood up until this date here or two days prior to this arrest.

Q. From who did you receive this within one month?

A. A confidential police informant and I can't recall exactly when.

Q. One confidential police informant?

A. During that one month period?

Q. Yes.

A. I really can't say, sir. It might have been three. It might have been ten. I don't recall.

Q. Do you recall any of the confidential informants at all during that one-month period?

A. Yes, sir.

Q. O.K. This one confidential informant whose name I won't ask you, has this informant testified in court?

A. No, sir, he hasn't.

Q. Has information from this informant led to the arrest of any other people?

A. One particular informant, it did, yes, sir.

56 Q. O.K. Did this pertain to drugs?

A. Yes, it did.

Q. And this informant told you that an individual was either selling or dealing or had possession of drugs and you in fact did discover that this information was true; is that correct?

A. I still can't get what you are getting at. I discovered on August 16 that it was certainly true, yes, sir. Until then I did not.

Q. Pardon me? Did you finish? What did you say then?

A. Until then I did not personally discover that she was dealing in drugs. That's the first purchase I made.

Q. We are talking now about this informant and testimony prior to this matter dealing with either Mrs. Santana or anyone else where this informant gave you information which proved to be true. Did that in fact occur?

A. Counselor, I really can't understand what the question is. There was no informant. When you keep speaking—there was no informant in this case.

Q. There was no informant?

A. Not with this—August 16, no, sir, there wasn't. I know what you are asking me, Counselor. Now, you are talking about something that may have happened or just happened at another time.

Q. Try and listen to the question if you will, please,

57 Officer. Prior to this time you testified that you received numerous complaints from numerous confidential informants pertaining to Dominga Santana also known as Mom Santana; isn't that correct?

A. That's correct, right.

Q. O.K. Now, do you remember not specifically the name, or if you do remember the name, fine, I am not asking for the name, do you remember any of these confidential informants?

A. Yes, sir.

Q. O.K. Now, not pertaining to this case, did that confidential informant give you information which led to the arrest of any other person at any other time prior to this arrest?

A. The last informant, no, sir. I stated that earlier. It had no—that was the first contact I had with that one particular informant.

The COURT. How about any other informants?

The WITNESS. The other ones have led to arrests, yes, for narcotics and for sales.

By Mr. LUBLIN:

Q. And their information, those other informants, had been correct; is that not right?

A. That is correct.

Q. And to the best of your knowledge did the information that these other confidential informants gave lead to convictions?

A. The most recent——

Q. Strike that. Strike the question, please.

58 Did their informaton prove to be true?

A. I stated it did, yes, sir.

Q. O.K. Now, we are talking about other cases and other people than the informants that we discussed earlier. Do you understand that?

A. I understand what you are talking about, something altogether different.

Q. Fine. On August 16, 1974, after you signaled to the other officers, what did you do? This is at the very end after you had arrested Patricia McCafferty.

A. Well, after the signal, I told them what was going on and everything. I went back to my unit.

Q. So then I take it you weren't present when the actual entry was made?

A. No, sir, I did not return to the address.

Q. O.K. And you didn't see the entry or anything like that; is that correct?

A. No, I did not.

Q. O.K. Now, what time was it when you left the area?

A. I made that purchase just about 7:30 P.M., maybe 7:31. According to my watch it was 7:30 when I told Sergeant Pruitt that the buy went down and I showed him the bundle of dope.

Q. Now, earlier when you had spoken to Patricia McCafferty on the telephone and you arranged to meet her at Mom Santana's——

A. No, sir.

59 Pardon me?

A. I did not arrange to meet her at Mom Santana's.

Q. She arranged——

A. No, sir. She told me to pick her up at Fifth and Ashdale Streets.

Q. Oh, then she would take you?

A. That's correct.

Q. To Mom Santana's? I am sorry. You are absolutely right.

Who suggested the time that you would meet, yourself or Patricia McCafferty?

A. She told—Mrs. McCafferty told me, "All right, pick me up in a short time," you know, which she said on other occasions before, "Ten or fifteen minutes." In other words, she was going to leave her house and walk up to the corner.

Mr. LUBLIN O.K. I have nothing further.

The COURT. Mr. Eisman, do you have a few more questions?

Mr. EISMAN. Yes, I do.

By Mr. EISMAN:

Q. You testified before that you had no plan with Sergeant Pruitt as to what would happen if in fact you did make this buy from McCafferty?

A. No, sir, I testified that I didn't take part in any plan that was made. I said Sergeant Pruitt handled that. I knew—I was well aware of the fact that there was going to be a buy

60 bust because I told him I wanted a buy bust.

Q. O.K. Well, in your report you say, "Sergeant Pruitt then advised me that he will take a team with him to back me up with the buy and if the buy goes down that I should inform him of the purchase immediately and that he and the team will retrieve the pre-recorded money."

Now, is that true?

A. That's correct. That's exactly what I just said, Counselor.

Q. So there was a plan which Sergeant Pruitt advised you of that he would take; is that correct?

A. Per se, I told him what—about the buy and he has got the——

Q. You also stated in this report prior to that, "I told Sergeant Pruitt that we were going to Dominga Santana's house at 2311 North Fifth Street to purchase a bundle of heroin." Isn't that correct?

A. That's correct.

Q. Now, how did you know that there would be drugs at Mom Santana's house?

A. I did not know except for the fact that Mrs. McCafferty said that that's where we may be going. I didn't know. I didn't say we were going there. I said we may be going to that location.

Q. Isn't it a fact that McCafferty said that she would take you to Mom Santana's house?

A. That's a fact.

Q. And that the purpose for going there was to buy drugs and that she has good dope and it will cost $115?

61 A. That's correct.

Q. And what time did you meet McCafferty?

A. I am not sure. I believe it was around 7:00 P.M., a short time after the conversation.

Q. The report says 7:15 P.M. Would that be correct?

A. It is possible. It was around 7 or 7:15; I am not sure.

Q. Now, McCafferty told you that she knew that Mom Santana had good dope and it will cost you $115; isn't that correct?

A. She told me that, yes, sir, on other occasions, too.

Q. You have made two prior purchases from her; is that correct?

A. From Mrs. McCafferty?

Q. Yes.

A. Yes, sir.

Q. You stated in this report that, "McCafferty got out of my auto and I observed her walk into 2311 North Fifth Street which is the known residence of Dominga Santana to me because I was at this location with an informant just two days prior to this incident." Now, is that correct?

A. That's correct.

Q. And she returned five minutes later; is that correct?

A. Yes, sir.

Q. And then after that you drove away and told her she was under arrest; is that right?

A. That's correct.

Q. What time was that?

62 A. Approximately 7:30 P.M.

Q. 7:30?

A. 7:30 or 7:31, in the area.

Q. Now, at the time you had units watching the house; is that correct?

A. At the time that Miss McCafferty left my auto?

Q. Yes.

A. Yes, sir.

Q. And how many policemen were involved in that surveillance?

A. Well, I was being trailed by several automobiles. To my knowledge there were three that were also in sight of the house and of my car and of Mrs. McCafferty, Sergeant Pruitt, Officer Morse and Officer Strohm.

Q. And they were all watching the house; is that right?

A. To the best of my knowledge there were.

Mr. EISMAN. I have nothing further.

Mr. LUBLIN. I just have two questions, Your Honor. It will be pretty much rapid fire.

By Mr. LUBLIN:

Q. Did you state in response to Mr. Eisman's question that Patricia McCafferty had told you many times before that Mom Santana had good dope?

A. I think I did, yes, sir.

Q. O.K. Now, would it be fair to say that from the time you picked up Patricia McCafferty to the time of her arrest

63 took approximately 10 minutes at most?

A. From the time I met her at Fifth and Ashdale?

Q. Yes.

A. Until the time we placed her under arrest? Fifteen minutes perhaps.

Q. Top 15 minutes?

A. Well, I am estimating. I am not certain. Probably within—according to the report, it was 15 minutes.

Q. Exactly. Is the report correct?

A. I am not certain word for word. That portion is——

Q. Did you pick her up at 7:15?

A. I am not certain I picked her up at 7:15.

The COURT. Wait. One at a time.

By Mr. LUBLIN:

Q. O.K. Are you certain the arrest was at 7:30 or 7:31?

A. That I am certain of because I even looked at the watch.

Q. And to the best of your knowledge it couldn't have taken more than 15 minutes, could it?

A. I am not certain.

The COURT. Is that approximately correct?

The WITNESS. Yes, sir.

The COURT. Did it take an hour?

The WITNESS. Oh, yes, definitely.

The COURT. Did the transaction take an hour from the time you picked her up until she was arrested?

64 The WITNESS. Oh, no, it was definitely within 20, 25-minute period.

The COURT. All right.

The WITNESS. There it says 16 minutes but it could have been 20 minutes.

By Mr. LUBLIN:

Q. Within 20 minutes?

A. I said 20, 25, a half an hour. It was no longer than that, though.

The COURT. Mr. McBride?

Oh.

By Mr. LUBLIN:

Q. Could it have been less than 10 minutes?

Mr. MCBRIDE. I object, sir. He has answered the question.

The COURT. He has answered it. I think so.

Mr. LUBLIN. No further questions.

The COURT. Well, could it have been less than 10 minutes?

The WITNESS. No, sir, I don't think.

The COURT. Could it have been eight minutes or nine minutes?

The WITNESS. No, sir.

The COURT. All right, Mr. McBride.

Mr. MCBRIDE. Nothing further.

65 The COURT. All right. You may step down, Officer Gilletti.

The WITNESS. All right.

The COURT. Oh, that took place in August; is that correct?

The WITNESS. Yes, Your Honor.

The COURT. All right. Was Mrs. McCafferty armed?

The WITNESS. No, she wasn't.

The COURT. All right. And you shouldn't discuss your testimony with any other witness, Officer.

The WITNESS. Yes, sir.

The COURT. All right, would you step up here on the witness chair, please?

[TESTIMONY OF OFFICER RICHARD STROHM]

RICHARD STROHM, sworn.

DIRECT EXAMINATION

By Mr. MCBRIDE:

Q. In case you want them (hands file to witness). Officer Strohm, by whom are you employed?

A. Philadelphia Police Department.

Q. How long have you been employed by them?

A. Seven and a half years.

Q. What is your present assignment?

A. Philadelphia Narcotics Unit plainclothes undercover capacity.

Q. How long have you worked in that capacity?

66 A. Over three years.

Q. Were you working in that capacity on August 16, 1974?

A. I was.

Q. Did you have occasion on that date to take part in an investigation concerning Dominga Santana and the defendant, William Alejandro?

A. I did.

Q. All right. Would you relate, please, to the court what part you took in that investigation?

A. Yes. On August 16, 1974 at approximately 7:25 P.M., myself along with Sergeant Pruitt, Badge No. 8549, Narcotics Unit, Officer Thomas Taggart, Badge No. 7322 in the Narcotics Unit, we were assigned on a surveillance point in the 2500 block of North Fifth Street to watch the defendant, Santana's house which was 2511 North Fifth.

At approximately 7:25 P.M. we observed Officer Gilletti park his private vehicle on Dauphin Street just west of Fifth. Another defendant, Patricia McCafferty, who is not present in the

courtroom at this time, got out of his vehicle and went into—walked cater-corner across Fifth Street to 2511 North Fifth Street. I observed the subject, McCafferty, tap the heads of little children that were on the street and the defendant, Mr. Alejandro sitting over there at defense table with his head tilted, he was standing on the steps and it appeared they had a brief conversation and McCafferty and Alejandro went
67 into the house, 2511 North Fifth Street.

At approximately 7:30 P.M., August 16, the defendant, Alejandro, came out the front door, looked both ways, north and south on Fifth Street, and then Patricia McCafferty emerged. She walked back to Fifth and Dauphin Streets and disappeared west of Fifth Street.

In a matter of seconds later, Officer Gilletti came north on Fifth Street in his private auto with the defendant, McCafferty. He passed our vehicle, gave us a hand signal with his left hand out his window, that he had made a purchase of narcotics.

Officer Gilletti then parked his vehicle in the 2700 block of North Fifth Street. Myself, Officer Taggart, Sergeant Pruitt, stopped in back of Officer Gilletti's car.

I might add that Officer Jumper, Badge No. 2415 in the Narcotics Unit, was also in our vehicle. And at this point Officer Jumper and myself left our van and approached Officer Gilletti's car.

Officer Gilletti had identified himself to the subject, McCafferty, and placed her under arrest.

Officer Jumper got into his vehicle—that is, Officer Gilletti's vehicle--next to McCafferty, and Officer Gilletti and the subject, McCafferty, relayed to me that Ma Santana—"Ma" is a nickname of Dominga Santana sitting next to Mr. Eisman there—that she had the money which the serial numbers were pre-recorded by Officer Gilletti.

68 At this time Sergeant Pruitt, myself, and Taggart returned to 2511 North Fifth Street.

We stopped the van. I got out of the side of the van and my badge and I.D. card in my left hand. The subject, Dominga Santana, was standing in the doorway. At this time the females—there was numerous females outside, sitting around the steps of 2511 and 2509 North Fifth Street—started hollering,

and the defendant, Santana, I also observed in her right hand a brown paper bag. She turned and walked back towards the house.

At this time I ran through the front door which was wide open and I grabbed the defendant, Santana, in the vestibule just at the dining area, and she turned hard right to go into the living room, I guess turning right itself off of the dining room, and I grabbed her by the right hand and told her she was under arrest. She kept pulling with her right hand in which she had the paper bag, and as she did, the bag tilted and two bundles of glazed paper packets with a white powder fell to the floor. I held on to the rest of the bag and the defendant, Alejandro sitting there, grabbed the two bundles that fell to the floor. He picked them up and started—appeared to me to be running or fast moving. I wasn't paying too much attention to him. I was more or less concerned with the defendant, Santana.

At this time Officer Morse lunged for him and had to subdue him. After he was subdued the defendant, Santana—or, correction—the defendant, Alejandro sitting over there,
69 dropped the two bundles back to the floor. Officer Morse picked up these two bundles, gave them back to me, and put them back in the brown paper bag.

Sergeant Pruitt secured the premises, had the defendant, Santana, empty out, I believe—empty out her pockets. Sergeant Pruitt would have to testify to that. That would be—I can't testify to that, what she had on her own. Anyway, she was warned of her rights, if she knew her constitutional rights, and she said, "Yeah, yeah." Nobody said anything to her. And she was placed under arrest.

And the defendant, Alejandro, was sent to the hospital with a head wound, I believe three stitches, I believe, to close the laceration on the top of his head. The uniformed took him to the hospital and then brought him to the Narcotics Unit.

Now, the brown paper bag which I confiscated out of the defendant's hand contained respectively 15 bundles of white powder in glazed paper packets totaling 241 bags of 10 bundles and five bundles. There was 118 bags.

I initialed most of the front and I believe—well, some of the packets in each bundle, I initialed "RTS" which are my initials

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and the amounts of each bundle. Some 24, 24, 23 packets and different bundles and also the date, 8–16–74, and these items were placed under the property receipt No. 543957 and submitted to the chemical lab.

70 Mr. McBride. Cross examine.

The Court. Mr. Lublin?

Mr. Lublin. Yes.

CROSS EXAMINATION

By Mr. Lublin:

Q. Officer Strohm, taking you to the point where you first say you saw the defendant, Alejandro, what did he do? Where did he come from?

A. Defendant Alejandro, I observed him in the dining area of 2511.

Q. The first time you saw him that day?

A. Oh, the first time I saw that defendant, Alejandro, that day, he was standing on the steps of 2511 North Fifth Street.

Q. And you did not see him exit from that property, is that correct, prior to that?

Q. You saw him enter thereafter, though; is that correct?

A. I never—he was on the premises. He was on the top step of 2511.

Q. Did you ever see him go back into the house?

A. Yes, sir, he did.

Q. Were you part of the back-up team to Officer Gilletti?

A. Yes, sir.

Q. Did you follow Officer Gilletti's car to Fifth and

71 Ashland?

A. Yes, sir.

Q. Approximately what time did you arrive at Fifth and Ashland?

A. In the area of 7, 7:10 P.M.

Mr. Lublin. No further questions.

The Court. Mr. Eisman?

By Mr. Eisman:

Q. You said that McCafferty said to you while she was in the car that Ma Santana had the money. Is that the statement that was made to you?

A. That's correct.

Q. You hadn't seen Ma Santana all that day, had you?

A. No, sir.

Q. You didn't see her outside the house at all, then; is that right?

A. That's correct.

Q. And when you ran up to the door, she was standing inside the house, inside the vestibule, in the doorway; is that right?

A. Visible from the Street level, that's correct.

Q. What?

A. Visible at street level.

Q. Right. But she was inside the doorway, is that right? That's what you testified to.

A. That's correct.

The Court. How far inside the doorway?

The Witness. Directly—just—the doorway, itself.

72 Your Honor, like if—she would be standing under the—be in the door. One step, she would be out; one step she would be inside the vestibule.

By Mr. Eisman:

Q. The threshold, would you say?

A. That's correct, sir.

Q. Where was Alejandro?

A. He was still inside.

Q. You had no information as to what was in that bag when you ran up the steps; is that right?

A. That's correct.

Q. And as you ran up the steps, she started backing into the house; is that right?

A. That's correct.

Q. And you went in after her?

A. That's correct.

Q. And you grabbed her arm and the bag opened up; is that what happened?

A. I grabbed her hand and a short struggle—she kept pulling—and then two bundles of heroin, alleged heroin, fell to the floor.

Mr. Eisman. I see. I have no other questions at this time.

The Court. Mr. Lublin?

Mr. Lublin. Nothing.

The Court. Mr. McBride?

73 Mr. McBride. Nothing further.

The Court. Oh, Officer, when you went into the house, who else was in the house other than the two defendants?

The Witness. That is all, Your Honor.

The Court. And other than yourself, what other police officers then went into the house?

The Witness. Sergeant Pruitt and Officer Morse. Let me see, that was at the immediate entry, and after the house was secured, I believe maybe another officer or two came in.

The Court. All right. Now, which of those officers were uniformed?

The Witness. That's right.

The Court. All right.

The Witness. Sergeant Pruitt or Officer Morse were plainclothesmen.

The Court. All right. Did you have your weapons ready for use?

The Witness. Yes, sir.

The Court. In your hand?

The Witness. I had mine in my hand, sir.

The Court. When you went in the door?

The Witness. Yes, sir.

The Court. Would it be visible to a person standing in the doorway?

The Witness. Yes, sir, it would.

74 The Court. And had you ever seen either of the defendants before?

The Witness. Yes, sir, I have.

The Court. And did you recognize them as Ma Santana, as you have described, or Mr. Alejandro, as you have described here?

The Witness. Just Ma Santana, Your Honor. I didn't——

The Court. You had never seen Mr. Alejandro before that day?

The Witness. That's correct, sir.

The Court. That's the first time you saw him?

The Witness. That is correct, sir.

The Court. Tell us again when you saw Defendant Santana standing in the door frame, what is it that you saw that she had in her hand?

The Witness. She had a brown paper bag in her right hand.

The Court. Give us some idea of the size of it? Was it the kind you get in a supermarket or the kind you get, a very small bag, that will hold a pack of cigarettes or something? What kind of bag was it?

The Witness. It would hold a quart of soda and it would be like a lunch bag, Your Honor, small, approximately 10 inches high, maybe four or five inches wide.

The Court. Now, you said you also heard voices. When was it that you heard some shouts or voices after you first

75 saw——

The Witness. As we got out of the van, Your Honor, the females outside—Ma Santana looked at us. I emerged from the van with my badge and I.D. card in my hand. The other people there started hollering.

The Court. How far away were you at that time to where either of the defendants were standing?

The Witness. I would say 15 feet, Your Honor.

The Court. And you mentioned a van. Is that an unmarked or a marked police van?

The Witness. Unmarked private vehicle.

The Court. Oh, it is an automobile?

The Witness. No, it is a van. It is privately owned.

The Court. I see. And did you say anything when you emerged with your badge and your credentials displayed?

The Witness. Yes, sir, "Police."

The Court. And did you say that before or after you heard the shouting?

The Witness. As I was getting out of the van, and the shouting, I guess it was simultaneously, Your Honor.

The Court. All right. Did you encounter anyone from that time, from the time you touched either of the defendants?

The Witness. No, sir. The girls that were standing outside just moved aside.

76 The Court. Was there any resistance of any kind other than the resistance you have described in respect to the defendant, Santana?

The WITNESS. No, sir, there wasn't.

The COURT. And the resistance that you observed in regard to the defendant, Alejandro?

The WITNESS. No, sir, there wasn't.

The COURT. All right. They are the only questions that I have. You may step down.

The WITNESS. Thank you.

Mr. LUBLIN. Wait. Could I just see the report again?

The COURT. Mr. Lublin may have another question.

By Mr. LUBLIN:

Q. When you looked from the street and you testified you held your badge up, Dominga Santana was in the vestibule; is that correct?

A. She was in the threshold.

Q. O.K. Now, while you were entering, did she do anything?

A. Pardon me, sir?

Q. Did she do anything, make any movement, do anything while you were entering, going up the steps into the house?

A. Yes, she was going back through the house toward the rear.

Q. Was that before you entered or after you entered?

A. Both.

Q. Did you state to Policeman Gilletti or Officer Pruitt that once you were inside this residence you observed Do-
77 minga Santana running from the vestibule towards the living room carrying a brown paper bag?

A. Not in those exact words.

Q. So that if those words were part of the 49 report they would be incorrect; is that correct?

A. The exact terminology, yes, sir, but basically, it is a summary.

Q. Pardon me?

A. I would say basically that would be a summary.

Q. Well, then, the summary would be incorrect; is that what you are telling us?

A. No, sir, the summary wouldn't be incorrect.

Q. Well, then, was it just when you got once inside the premises that you saw her running or was it prior to that time?

A. Both, sir. She turned around as I exited the van. As I entered the vestibule, she was entering the dining area.

Q. So that if the 49 report didn't have any information as to her moving prior to entering, it would be deficient; is that correct?

A. I would have to see it, sir. I don't know what is in there.

Mr. LUBLIN. With the court's permission——

The COURT. Yes. Whether it is deficient or not is another question. You can ask him if he agrees with that version of it. Whether it is deficient or not is the court's conclusion.

A. Where is that?

78 (Discussion off the record between Mr. Lublin and the witness.)

By Mr. LUBLIN:

Q. That is what the report says, is it not?

A. That's correct, sir, but there is a few thousand vowels left out. Basically that is correct.

Mr. LUBLIN. No further questions.

The COURT. Mr. McBride?

Mr. McBRIDE. I have nothing further.

The COURT. All right. I just have one more I forgot to mention. After you received your hand signal from Officer Gilletti, that was a pre-arranged signal of some kind?

The WITNESS. That's correct, sir.

The COURT. And that signal meant to you and your partners that the transaction had been completed?

The WITNESS. That's correct, sir.

The COURT. Now, then, you visited Gilletti's car and after that you left to go to the building where the defendant, Santana, was reported to be; is that correct?

The WITNESS. That's correct, sir.

The COURT. Now, at that minute when you left, what was your purpose in going to that house? What did you intend to do?

The WITNESS. I immediately intended to recover the marked money which was used in the transaction and to arrest
79 the defendant, Dominga Santana.

The COURT. All right. That's all. You may step down.

The WITNESS. Thank you, sir.

The COURT. All right, Mr. McBride.

Mr. McBride Would you ask Sergeant Pruitt to come in, please.

The Court. All right, would you step up here, Sergeant Pruitt, please.

[Testimony of Sergeant Harold Pruitt]

Harold Pruitt, sworn.

DIRECT EXAMINATION

By Mr. McBride:

Q. Sergeant Pruitt, how long have you been with the Philadelphia Narcotics Squad?

A. Two years and two months.

Q. And were you employed with them on August 16, 1974?

A. I was.

Q. Did you have occasion to take part in an investigation on that day concerning the defendant, Dominga Santana, and the defendant, William Alejandro?

A. I did.

Q. All right. Now, did there come a time in your investigation when you arrived at the premises 2311 North Fifth Street?

A. I did.

80 Q. O.K. Would you start there and relate to the court what happened when you arrived at 2311 North Fifth Street? Keep your voice up, please.

A. If Your Honor pleases, we arrived at that location. It was approximately 7:35 P.M. I got out of the bus directly behind Policeman Strohm and in the doorway in a vestibule between the front door and the inner door I saw the defendant. Dominga Santana. She—Policeman Strohm got out the of the bus and approached the door. He had his badge up and he hollered, "Police."

And Dominga Santana had a bag in her hand and she started inside the house.

I followed Policeman Strohm into the house and it was—we got into the dining room area of the house.

Officer Strohm recovered the bag. He grabbed the bag out of her hand. We had gone there to retrieve money that had been used in the purchase of narcotics.

As he grabbed the bag, something fell out of the bag. It appeared to be narcotics.

Officer Morse had come in the door behind me and a struggle ensued between myself, Dominga Santana, and Officer Strohm, and a struggle between Officer Morse and the defendant sitting to the right here.

Q. Alejandro?

A. Alejandro, right.

81 After the defendants were subdued I took Dominga Santana into the kitchen area and told her to empty her pockets on the table. This was after Officer Strohm had told her she was under arrest.

She emptied the contents of her rear pocket, pants pocket, out and it contained approximately $135 in U.S. currency.

I took a card from my pocket which had been given to me by Policeman Gilletti prior to leaving the narcotics units and it had serial numbers of bills recorded on it.

Q. All right. Excuse me just a minute.

The Court. See if Officer Gilletti has D–1.

The Witness. Here it is.

By Mr. McBride:

Q. All right. We will get the actual one.

All right. So continue with what you did. You took the card?

A. I took the bills that she had taken from her rear pocket, right pocket, and I compared them, serial numbers of these bills against the serial numbers of the bills that had been recorded on the card.

Q. I see. And where did you get those bills?

A. From her right rear pants pocket.

Q. That's the defendant, Santana's?

A. That is correct.

Q. All right.

82 A. I located three $20 bills, Serial No. E. 18967047 A—Andy; Serial No. E 80681160 B—Barney; Serial No. F—Frank—085328698 Andy. These were all of $20 denominations.

There was one $10 bill. Serial No. D—Dan—16594003 B—Barney.

These bills were part of the money that had been recorded prior to leaving the Narcotics Unit by Officer Gilletti.

Q. Is that the money that Officer Gilletti used in making the buy from Patricia McCafferty?

A. Yes.

Mr. McBride. Would you mark this Government's Exhibit G–1, please.

(Photostatic copy of money was marked Exhibit G–1 for identification.)

By Mr. McBride:

Q. Sergeant Pruitt, let me show you what has been marked G–1.

Would the court care to see this?

The Court. No.

By Mr. McBride:

Q. And would you identify this?

A. Those are the bills that were taken. They have Officer Gilletti's initials on the forehead of the pictures on the bills.

Q. O.K. Well, they are not the actual bills, are they?

A. They are not; they are photostatic copies.

Q. O.K. Now, I will show you what has been marked D–1 and see if you can identify it. Would you identify that, please?

83 A. Yes, that's the card that was given to me by Policeman Gilletti, and when I arrived back in the Narcotics Headquarters, this was recorded on the back of it.

Q. All right. What did you do after that, Sergeant Pruitt?

A. The defendants were then transported—well, Dominga Santana was warned of her rights but she had a problem of understanding the English language. There was another female inside the location that had come in after we had come into the location who was a relative and I advised her that I was trying to explain her rights to her.

The other defendant, the gentleman sitting to the right——

The Court. Alejandro.

The Witness.—Alejandro—was transported to the hospital by police wagon for stitches in the head.

Mr. McBride. O.K. I have no further questions.

If it please the court, I believe that Sergeant Pruitt's testimoney would have been repetitious. In the beginning I started

him out at 2311. I have no objection if defense counsel want to cross examine him as to other events.

The Court. All right, Mr. Lublin.

CROSS EXAMINATION

By Mr. Lublin:

Q. Yes, just briefly.

84 Did you lease the van the same time that Strohm did?

A. Immediately afterwards.

Mr. Lublin. No further questions.

The Court. Mr. Eisman?

By Mr. Eisman:

Q. As far as the layout of the house you testified there were two doors, a front door and then a door in the vestibule; is that right?

A. It is a vestibule. As you go into the house, there is a hallway. A door to the right would go into the—one would go into the living room and one would go into the dining room.

Q. You say you initially saw her standing inside the vestibule?

A. Well, she was standing right in the doorway. The vestibule is when you step up on the top step. You go—you are practically in the vestibule then.

Q. Is that where she was?

A. When I first saw her? Yes.

Q. And the door was open or closed?

A. It was open.

Q. Was the inside door open or closed?

A. Pardon me?

Q. Was the inside door open or closed?

A. When I got inside I couldn't tell from the angle whether the inside door was open or closed, but it was open when

85 I went through the door

Q. O.K. Now, you were in this from the beginning, is that right, what you testified to; is that right?

A. That's correct.

Q. And you were told back at the narcotics headquarters that Gilletti was going to this house to try to get a buy; is that right?

A. No.

Q. What were you told?
A. I wasn't told directly that he was going to get a buy.
Q. What were you told?
A. What was I told?
Q. Yes.
A. Officer Gilletti had told me that he had a 25 bag or one bundle of heroin purchase that he was going to purchase and that McCafferty was going to take him possibly to a new location where Dominga Santana had moved to.
Q. Did he give you the address?
A. Yes, he did.
Q. And that's where the buy was supposed to take place according to McCafferty?
A. Not necessarily. It was—the problem was that we weren't sure the buy was going there, so I didn't disperse my men. I only sent two men down into that area to put up a surveillance. The other five men I put as a tail on Officer Gilletti. We were——

86 Q. How many men altogether did you have?
A. We had nine.

Q. Nine?
A. Counting myself.
Q. Now, when did you first learn that McCafferty had made a buy at this location?
A. I saw McCafferty go to that location and meet with Alejandro and go into the house and come out. Alejandro came out of the house and then McCafferty came out of the house and went back to the area where Gilletti had his car parked.
He immediately pulled around the corner, north on Fifth Street. About a block and a half, we pulled beside Gilletti and he said the buy had gone down. He gave us a pre-arranged signal that the buy had gone down by waving his arm. He said the buy had gone down, that Momma had—that Momma Santana had the money. He showed us the narcotics.
We immediately returned to that area and met with Officer Morse who had the house under observation.
Q. And that was the only information you were given by Officer Gilletti, is that right, at that time?

A. That the buy had gone down, that he had the drugs. He had showed us the drugs and that Momma Santana had the money.
Mr. EISMAN. I have no other questions.
The COURT. Mr. McBride, any additional questions?
Mr. McBRIDE. No, sir.

87 The COURT. Sergeant Pruitt, were you in charge of the group?
The WITNESS. I was, Your Honor.
The COURT. And was this house a typical row house?
The WITNESS. It was, Your Honor.
The COURT. And that means it had one front door?
The WITNESS. Yes, Your Honor.
The COURT. And was there a rear door also?
The WITNESS. There was, Your Honor.
The COURT. Did you have any men stationed at the rear?
The WITNESS. No, I didn't.
The COURT. Would that ordinarily be something you would do under those circumstances?
The WITNESS. Under the circumstances if I could have got a man back there without being detected I certainly would have.
The COURT. I see. And that's the reason why you didn't do that; is that correct?
The WITNESS. That is correct.
The COURT. Did you consider after you had come to the front of the premises and had seen Defendant Santana in the doorway, did you consider before exiting the van securing an arrest warrant from a magistrate or other judicial officer?
The WITNESS. There wasn't time, Your Honor.

88 The COURT. Could you explain the basis upon which you concluded at that juncture that there was not time?
The WITNESS. Are you referring to the search warrant, sir?
The COURT. Well, either one, the search or an arrest warrant.
The WITNESS. There wasn't time for the search warrant because he had to meet McCafferty at 7:15 at her home and at the time that I received the message was between 6:40 and 6:45. That gave us less than 30 minutes to type up a search warrant and get it signed and again the main reason that I didn't do it was the fact that I wasn't sure we were going to that location.

The COURT. All right. Now, at the time you went to the location, after having received the pre-arranged signal from Officer Gilletti, I understand that Defendant Santana had possession of the marked money; is that correct?

The WITNESS. That is correct, Your Honor.

The COURT. What was your purpose in going to the premises at that time? What were you going to do when you got there?

The WITNESS. To recover the money that was used in the purchase of that heroin.

The COURT. Were you going to effectuate an arrest of any kind?

The WITNESS. Yes, I was, Your Honor.

89 The COURT. Had you given consideration to securing an arrest warrant based upon Officer Gilletti's information?

The WITNESS. There wasn't time again, Your Honor.

The COURT. All right. Would you explain for the record again the basis upon which you concluded as the officer in charge that there was not sufficient time?

The WITNESS. The reason that we went immediately was to recover the money which was part of the evidence in this case, and had we waited an hour, the money may not have been in that house at that time or it might not have been on the person of Dominga Santana.

The COURT. All right. Now, was the house furnished?

The WITNESS. Yes, it was, Your Honor.

The COURT. And did it appear as though someone lived there?

The WITNESS. Yes, Your Honor.

The COURT. And did you learn at that time or at a later time who actually did live there?

The WITNESS. Yes, Your Honor.

The COURT. And who was that person?

The WITNESS. Dominga Santana.

The COURT. And when did you first learn that?

The WITNESS. Inside the residence we found papers with her name and address on it.

The COURT. All right. Were there any weapons found

90 in connection with this episode?

The WITNESS. Yes, Your Honor.

The COURT. Other than obviously the police weapons?

The WITNESS. Yes, sir.

The COURT. Any other weapons?

The WITNESS. There were. There was a meat cleaver and a large butcher knife on the dining room table and there was one or two butcher knives on the kitchen table.

The COURT. Were they ever used as weapons or did you believe that they might be used as weapons?

The WITNESS. There was a strong possibility they could have been grabbed by one of the defendants.

The COURT. All right. They are the only questions that I have.

Mr. MCBRIDE. I have one other question.

REDIRECT EXAMINATION

By Mr. MCBRIDE:

Q. Sergeant Pruitt, was all of the money that was marked recovered?

A. No, it was not.

Q. So that some of the money, even after you hit the house, had disappeared somewhere?

A. That is correct, $40.

Mr. MCBRIDE. Thank you.

91 The COURT. How many bills was that, do you know?

The WITNESS. Yes, sir.

The COURT. Were they all 1's?

The WITNESS. No, Your Honor. There was five $20 and one $10. We recovered three $20 bills and one $10. Two $20 bills were still missing.

The COURT. Mrs. McCafferty didn't have that?

The WITNESS. No, Your Honor.

The COURT. That was never recovered?

The WITNESS. No, Your Honor.

The COURT. All right. Any additional questions of the witness?

Mr. LUBLIN. Yes, sir.

RECROSS EXAMINATION

By Mr. LUBLIN:

Q. How many men did you say took part in this?

A. Nine men.

Q. What prevented you from sending one of those nine or another individual to get a warrant?

A. What would——?

Mr. McBride. Excuse me, what prevented that?

The Court. What prevented him from sending one of those men to get an arrest warrant, is that what you meant, or a search warrant?

92 Mr. Lublin. Exactly.

The Witness. What kind?

The Court. Either one. Let's start with the search warrant.

Mr. McBride. I would object to that. I think he has answered that in response to Your Honor's question.

The Court. I will permit counsel to frame the questions maybe in a more appropriate way than the court did. Objection overruled.

You may answer it. If necessary, answer it again, but you have to answer it again, Officer.

The Witness. The time element.

By Mr. Lublin:

Q. You had no other men there in narcotics; is that correct?

A. I had no other men at narcotics?

Q. Is that correct, when you first received this phone call?

The Court. Now, you mean at 6:40 P.M. as he testified?

Mr. Lublin. Yes.

The Court. We are talking about before this caper began.

Mr. McBride. I would object to that question, sir. How can the sergeant get a search warrant before anything has happened on which to base the probable cause? That question doesn't make any sense.

93 Mr. Lublin. Do you wish me to respond to that, Your Honor?

The Court. No, I want the witness to respond.

A. If I wasn't going to the location I would not need a search warrant. Had I known for sure I was going to that location then I would have dispersed my men all around to that location then and I would not have sent—I would only have sent one car to tail the people. As it was, I took the largest portion of my men and we followed Officer Gilletti.

By Mr. Lublin:

Q. Isn't it a fact that Sergeant Pruitt told you——

A. I am Sergeant Pruitt.

Q. Excuse me—Policeman Gilletti told you that he and McCafferty were going to Dominga Santana's house, 2311 North Fifth Street, to purchase a bundle of heroin; isn't that a fact?

A. That's—he told me.

Q. Yes or no, is it or is it not a fact?

The Court. Mr. Lublin, let's not badger the witness.

Mr. Lublin. Your Honor, it calls for a yes or no answer.

The Court. All right, but don't argue with him.

Can you answer that yes or no?

The Witness. No, I can't, Your Honor.

The Court. He can't, your Honor.

94 Give us the best answer you can.

A. He told me that he thought that's where the buy was going to go down.

By Mr. Lublin:

Q. Did he give you the basis of why he thought this to be true?

A. Because the defendant, McCafferty, said that she was going to try to cop a bundle from Dominga Santana.

Q. Did he tell you that she said she was going to try to cop a bundle or that she was going to cop a bundle? This is as Gilletti gave it to you, to the best of your recollection.

A. She was going—to the best of my recollection—that she was going to try to cop a bundle from Dominga Santana.

Q. And, as a matter of fact, didn't he tell you that she told him the exact address where she was going to, that being the Fifth Street address?

A. She—he told me that, "We may go to 2511 North Fifth Street."

Q. So then you knew the exact address? Now, isn't it also a fact, Sergeant, that prior to this time you had received numerous complaints about Dominga Santana?

A. No, that is not correct.

Q. Are you telling the court today that you had no prior information about Dominga Santana?

A. No, I am not telling you that, either, I have not had numerous complaints.

95 Q. Did you have any complaints from anyone on any information from anyone pertaining to the sale or possession of heroin by Dominga Santana?

A. To the best of my knowledge Dominga Santana had been arrested for possession but as far as I know, as far as the complaints go, I was not aware that Dominga Santana lived on Fifth Street at the time. The last account I had, she lived around Sixth and Glenwood.

Q. Did you have any information prior to this arrest from any police informants or any other person that Dominga Santana was in the business of either possessing or selling dope?

A. Yes.

Q. From how many different sources did you have this information?

A. Officer Gilletti.

Q. That was the only source that you had; is that correct?

A. It has been—I imagine that other officers have mentioned it to me.

Q. Isn't it a fact that other officers have mentioned it to you, Sergeant?

A. It is possible, but not at that location.

Q. O.K. But at other locations, isn't that right? Now, isn't it a fact that you also knew at this time that McCafferty had on three other occasions made sales of heroin to your officers?

A. Yes, I knew that.

Q. So then you knew she had made the sales; isn't that a fact?

96 A. Yes.

Q. You knew of prior information pertaining to Dominga Santana; isn't that also a fact?

A. Prior to——?

Q. Prior to this incident?

A. That Dominga Santana had been involved with McCafferty? No, I didn't know that.

Q. You had no knowledge of that whatsoever?

A. Not until I was told by Policeman Gilletti.

Q. Well, did he tell you at that time or did he tell you later?

The Court. What time?

Mr. Lublin. Pardon me?

The Court. What time?

By Mr. Lublin:

Q. Right after the phone call?

A. Did he tell me what?

Q. That he had had information that Dominga Santana was dealing with drugs or the like.

A. I think he told me at that time.

Q. Then you did have that information at that time, isn't that right, that he had prior information from informants and other people that she had been dealing in drugs; isn't that correct?

A. No, not informants and other people. You keep harping on informants. I am talking about my police officers. I don't consider them my informants.

97 Q. Well, didn't your police officer, Offiier Gilletti, tell you that she was dealing in drugs?

A. Dominga Santana was dealing in drugs?

Q. That's correct, sir.

A. I believe he did.

Q. So you had information from your police officer that she was dealing in drugs. He now gave you the response to a phone call received by Pat McCafferty who had prior to this time made three sales to your officers; is that correct?

A. That's right.

Q. That a sale was going to go down at a certain address; isn't that correct?

A. That's not correct.

Q. That she was going to try to cop dope at this address?

A. That's correct.

Q. Right?

A. That's right.

Q. Which was the address of Dominga Santana; isn't that right?

A. Yes.

Q. O.K. Now, what prevented you from sending an individual other than those individuals that went on the street at that time to get a warrant?

A. I would have had to have probable cause, No. 1.

Q. So you determined that there was not enough probable cause; is that right?

98 A. I don't think it would have been.

Q. But you made that determination; is that correct?

A. That's right.

Mr. McBride. I object to that. I don't see what difference that makes.

The Court. Well, you made that judgment?

The Witness. Yes, Your Honor, I did.

The Court. All right. He made the judgment.

That's all right.

By Mr. Lublin:

Q. Now, you testified——

The Court. It has to go, Mr. McBride, to the reasonableness of the policeman's conduct. The court will have to determine if that was a reasonable judgment by this officer. It may have been wrong but it may have been reasonable.

Mr. McBride. Very good, sir.

The Court. It may have been correct. It may have been unreasonable.

By Mr. Lublin:

Q. Now, you testified as to two weapons which were in the house, two knives; is that correct?

A. Yes.

Q. O.K. Did you have any information whatsoever that those knives were there prior to your going into that home?

A. No, I didn't.

99 Q. Did you have any information or any reason to believe that Dominga Santana might have been armed?

A. I had no reason to believe it nor disbelieve it.

Q. O.K. And isn't it also a fact that you had no reason to believe that she was dangerous?

A. I can't make that judgment as I had not come in contact with her before personally.

Q. O.K. But you didn't believe her to be dangerous; isn't that correct?

A. I had every——

Q. You didn't know whether she was or wasn't?

The Court. Let him answer. You asked six questions at once.

A. Every narcotics dealer is potentially dangerous.

By Mr. Lublin:

Q. Well, yes, but this specific person you have never encountered before; is that correct?

A. That's what I testified.

Q. So you didn't know whether she was armed or unarmed, dangerous or not dangerous; isn't that correct?

A. That's what I testified to.

Q. O.K. What information led you to the belief prior to entering that home that there was in your own words a strong possibility of the evidence, that being the money or any drugs there, that would not be there or would not be there if

100 you did not obtain a search warrant at that time?

A. I don't understand your question, Counselor.

Q. You said earlier there was a strong possibility that the money or drugs wouldn't be there if you had gotten an arrest warrant. What led you to believe that there was a strong possibility of this?

A. Because in my past experience I found that money in the hands of a drug dealer seldom stays in one place very long and it is certainly—the drugs are not going to stay there very long, a fast turn over and they move out.

Q. Those were your sole reasons for determining that there was a strong possibility of the money and the drugs not being there; is that correct?

A. In my opinion, yes, as a police officer and knowing what I know about the drug traffic in the city of Philadelphia, that is correct.

Mr. Lublin. I have nothing further, thank you.

Mr. Eisman. I have one other question.

By Mr. Eisman:

Q. You have no information that Mrs. Santana or anybody else in the house was aware that you had arrested McCafferty; is that right?

A. I have what? I am sorry.

Q. I say you have no information that either Miss Santana or anybody else at the house knew you had arrested McCafferty; is that right?

101 A. We were a block and a half from her home when the arrest was made. I am sure that the word would have been back within a matter of seconds or minutes.

Q. You had no specific information?
A. No, no specific information, no.
Q. You are guessing, then, that somebody might have gotten the word back; is that right?
A. Yes, that's correct.
Mr. EISMAN. I have no further questions.
Mr. McBRIDE. No questions.
The COURT. You may step down, Sergeant.
Oh, Seageant Pruitt, were all the officers armed?
The WITNESS. Yes, Your Honor.
The COURT. And were they required to be armed for this particular mission?
The WITNESS. They are required to be armed at all times, Your Honor.
The COURT. Thank you.
Mr. McBRIDE. Will you ask Officer Morse to come in, please.

[TESTIMONY OF OFFICER FREDERICK MORSE]

FREDERICK MORSE, sworn.

DIRECT EXAMINATION

By Mr. McBRIDE:

Q. Officer Morse, how long have you been employed
102 by the Narcotics Squad of Philadelphia?

A. I have been in the Narcotics Squad approximately 10 months.
Q. All right. Were you employed with them on August 16, 1974?
A. Yes, sir, I was.
Q. And did you have occasion to take part in an investigation involving Dominga Santana and William Alejandro?
A. Yes, sir, I did.
Q. All right. Did that investigation take you to the premises at 2311 North Fifth Street?
A. Yes, sir, it did.
Q. All right. Would you picking up tell us what happened when you arrived at 2311 North Fifth Street? Would you relate to the court what you did at that time?

A. Yes, sir.
If Your Honor please, on August 16, 1974, at approximately 7:35 P.M. in company with other members of the Narcotics Squad I came to the residence of 2311 North Fifth Street. We got out and identified ourselves as police officers.
Dominga Santana ran back inside. Strohm went first. Sergeant Pruitt was second.
As we entered the dining room area I observed Officer Strohm struggling with Mrs. Dominga Santana, trying to take a bag out of her hand when two bundles of glasine packets dropped on the floor.

At this time Mr. Alejandro ran down and picked up
103 the two bundles of glasine packets and was going towards a table which was in the dining room area which I observed had one meat cleaver and one carving knife on it.

I at this time struck Mr. Alejandro once on the top of the head with my blackjack, causing him to go down on the floor. I picked up the drugs and gave them to Policeman Strohm and secured Mr. Alejandro, placed him under arrest.
Mr. McBRIDE. Cross examine.
The COURT. Mr. Lublin?

CROSS EXAMINATION

By Mr. LUBLIN:

Q. How many men from Narcotics were at the area at this time?
A. Well, there was myself, Sergeant Pruitt, Officer Strohm, and I believe Willy Davis and Gary—Officer Davis, the both Davises was on the outside. I am not sure.
Q. Did either of the Davises ever go in?
A. I don't recall.
Q. Is it your testimony that Mrs. Santana was outside of the home?
A. No, she was in the doorway.
Q. You had come from 22nd and Hunting Park originally; is that correct?
A. Originally, yes.

Q. 22nd and Hunting Park is Narcotics Headquarters;
104 is that correct?

A. No. 5 Squad Headquarters.
Q. At that time?
A. That's right, still is, sir.
Q. Still is? O.K. Some of the other narcotics are down——
A. The rest of the squad are down at 8th and Race.
Q. Did Mr. Alejandro ever touch any of those knives there?
A. He didn't have a chance to, sir.
The COURT. The answer is "No"?
The WITNESS. No, sir.
Mr. LUBLIN. No further questions.
The COURT. Mr. Eisman?
Mr. EISMAN. I have no questions.
The COURT. Mr. McBride?
Mr. MCBRIDE. Does the court have any?
The COURT. Yes.
Were the knives and the cleaver—tell us, where were they?
The WITNESS. They were on the dining room table, sir.
The COURT. What else was on the dining room table?
The WITNESS. Oh, I believe they had some papers on there and I believe they had, like, a punch bowl, I think.
The COURT. Were there any other implements, cooking
105 implements, the kind of things you find in a kitchen?
The WITNESS. Not to my knowledge, no, sir.
The COURT. All right. That's all, thank you. You may step down.
Mr. MCBRIDE. Thank you.
That concludes the Government's witnesses, sir.
The COURT. All right. Can we have your first witness, Mr. Lublin?
Mr. EISMAN. Your Honor?
The COURT. Or Mr. Eisman?
Mr. EISMAN. I think I will put the first witness on.
The COURT. You think you will what? I didn't hear you.
Mr. EISMAN. I will place my witness on.
The COURT. All right, fine.
Mr. EISMAN. We want Carmen Colon.
Mr. MCBRIDE. May the police officers come back into the courtroom now, sir, since they are finished testifying?
The COURT. Any objection to that?

Mr. EISMAN. I have no objection as long as they are not going to testify any further.
Mr. MCBRIDE. Not on the suppression that I know of unless in rebuttal because of some of your people.
Mr. EISMAN. Well, if there is a possibility they might
106 be brought back in, I would ask they stay out.
The COURT. Mr. Eisman would like them to stay out. I will honor that. They may be called on rebuttal or redirect or something. They also may testify at a trial if there is one.

[TESTIMONY OF CARMEN COLON]

CARMEN COLON, sworn.

DIRECT EXAMINATION

The COURT. All right, Mr. Eisman.
By Mr. EISMAN:
Q. Carmen, I direct your attention to the 16th of——
Mr. MCBRIDE. Excuse me, can we have an offer of proof on this witness, sir?
The COURT. Yes, would you outline to the court what you expect to prove?
Mr. EISMAN. She was present at the time that the officers——
The COURT. ——entered the house?
Mr. EISMAN. ——entered the house.
The COURT. And she is offered to explain some of the circumstances surrounding that episode?
Mr. EISMAN. Yes, sir.
The COURT. All right, I will permit that.
Mr. MCBRIDE. Allegedly she did not take any part in it; is that correct?
The COURT. Well, she may have. Let's hear what she
107 says.
Mr. MCBRIDE. All I want to know is, if she is in any way going to implicate herself, then I think she should be aware of what she is doing on that.
Mr. EISMAN. No, she is just a witness.
Mr. MCBRIDE. O.K. I didn't want her to implicate herself unwittingly. I want her to do it wittingly if she is going to do so.
Mr. EISMAN. She was just identified, at least according to this 49 police report, as being in the residence.

The COURT. I will listen and if it looks like we are getting into a dangerous area, I will warn her of her rights.

By Mr. EISMAN:

Q. Mrs. Colon, were you present at 2311 North Fifth Street on the evening of August 16, 1974?

A. Yes. I was.

Q. And where were you prior to the time the police arrived?

A. I was on the top of the stairs outside by the door.

Q. O.K. and I want you to relate exactly what occurred when you first observed certain people coming towards the house?

A. Well, I seen all kinds of people running to the house.

Q. Now, when you say "all kinds of people," were they men or women?

A. They were mens.

Q. How were they dressed?

108 A. They wore regular clothes.

Q. And what if anything did they have in their hands?

A. They have guns.

Q. Did you notice any badges?

A. No.

Q. Did they say who they were?

A. No.

Q. What did they do?

A. They just ran and say, "Hold it, freeze."

Mr. MCBRIDE. What? I can't hear.

The COURT. They ran and said, "Hold it, freeze."

Try to keep your voice up. O.K.? Otherwise you will have to repeat everything.

The WITNESS. O.K.

The COURT. Speak very loudly so we can all hear.

By Mr. EISMAN:

Q. Where did they go?

A. They went into 2311 Fifth Street.

Q. All right. And did you see Dominga Santana in the house prior to the time they arrived?

A. Yes.

Q. Where was she?

A. She was right in the hallway from the door.

Q. All right. Now, did she have anything in her hand at that time?

109 A. No.

Q. And what did they do when they got past you?

A. When they stopped toward us and said, "Freeze," that's when they ran, and when they ran in, there was two cops there fighting in the hallway.

Q. Two cops fighting with her?

A. There were two cops fighting with each other.

Q. What were they doing? What were they arguing about?

A. I don't know. One of them was talking about,"Stay outside." That was it.

The COURT. One was saying what?

The WITNESS. "Stay outside."

The COURT. "Stay outside"?

The WITNESS. Yes.

The COURT. Trying to talk the other one into staying outside?

The WITNESS. Right He as talking to the other cop. One cop was telling the other cop.

The COURT. All right.

Mr. Mr. EISMAN:

Q. Then what did you do?

A. I walked in.

Q. And what did you observe?

A. I see they had a bag in their hands.

Q. Who had a bag in their hands?

110 A. One of the cops.

Q. O.K. And what if anything else did you observe?

A. They have William the guy that was in there that was supposed to be named William, and the lady that was in the house.

The COURT. Is it William over here at the table?

The WITNESS. Yes.

The COURT. And the lady, Mrs. Santana?

The WITNESS. Yes, sir.

By Mr. EISMAN:

Q. And what were they doing?

A. They just went in at the time.

Q. All right. Now, what were they doing with relation to Dominga and William?

A. They was asking for some marked money at the time that I walked in.

Q. All right. Now, did you see them search either Dominga or William?

A. I seen when they dragged the guy upstairs and they told Dominga Santana to empty her pockets.

Q. All right. When she emptied her pockets what did she have in her pockets?

A. She had $24 in her pockets and some keys.

Q. Now, did they search for any more money in the house?

A. They were searching the house at the time and actually what they found was an orange used bottle full of quarters you know, half dollars, and dollars or coins.

Q. Where did they find that, do you know?

A. That's all in Miss Santana's house, in the room.

Q. What room, do you know?

A. Yes, sir, her room.

Q. What?

A. Her room.

Q. Her room, which is where?

A. Which is in the front.

Q. The first floor or second floor?

A. Second floor front.

Q. How long were they in the house searching?

A. They was there—I can't tell you the exact time. They was there for a few hours.

Q. And did they search you also?

A. Yes.

Q. Did they take you into the police station?

A. Yes.

Q. What happened to all the other people that were sitting out on the steps?

A. Well, the people that was outside, some of them left and some of them couldn't come into there.

Q. Did you overhear the police saying anything other than, "Freeze, hold it"?

A. That's exactly what they said.

112 Q. What?

A. That's all they said.

Q. When did you find out that these people were police?

A. When I was talking to one of them.

Q. When?

A. In the house.

Q. What did you think they were?

A. I thought it was a stick u:., they was going to stick up the house or something. That's what I thought, because they was in the regular clothes and they just had guns. They didn't show a badge or nothing.

Q. Did they come in police cars or unmarked?

A. To tell you the truth, I didn't see them come out of the car at all. I just seen them running towards us.

Mr. EISMAN. I have no other questions at this time.

The COURT. Mr. McBride?

CROSS EXAMINATION

By Mr. McBRIDE:

Q. Miss Colon, are you related to either one of the defendants?

A. Miss Santana, she is my mother-in-law.

Q. She is your mother-in-law? I see.

You thought that the officers when they were running towards the house were stick-up men and they were going

113 to rob and hold up the house; is that right?

A. Yes.

Q. Why did you walk into the house, then, if you thought this was going on?

A. Because the only person that was there was the guy and my mother-in-law and I was by the door when they ran in, that I see, you know. I see two guys were fighting. I just——

Q. Two cops were fighting?

A. To see what happened, yes.

Q. How did you know that they were cops if you just walked in?

A. I knew they were cops after I was in the house.

Q. How did you find out?

A. I knew they were cops.

Q. How did you find out?

A. When I was in the house, I was talking to one of the guys there and they told me they were cops.

Q. Was this after you walked in and saw them fighting or before?

A. No, that's when I walked inside the house; right?

Q. Yes.

A. They were fighting; right?

Q. Right. And you knew they were cops?

A. No, I didn't know they were cops. When I talked to one of them, he told me they were a cop which is William Davis which is not here.

Q. Oh. Well, when you thought the place was being held up——

114 A. Yes.

Q.——why didn't you run to somebody's phone and call the police rather than just walk into the middle of that hold-up?

A. I knew my mother-in-law was there by herself.

Q. And you thought you were going to be of some help against these people with guns?

A. Well, I was going in, either way.

Q. It couldn't be you knew they were police in the first place?

A. No. I didn't know they were police.

Mr. McBRIDE. I see. I have no further questions.

Mr. LUBLIN. I have no questions.

The COURT. All right. Right before they went in, you were standing on the front steps next door?

The WITNESS. No, I was right outside in front of the house, 2311.

The COURT. Oh, their front step?

The WITNESS. On the front step.

The COURT. Oh.

The WITNESS. On the top.

The COURT. On the steps or on the sidewalk?

The WITNESS. On the top step.

The COURT. On the top? How many other people were around that vicinity?

The WITNESS. There was my sister-in-law sitting right, you know—here goes the steps—right over there by the pave-

115 ment, looking towards the house, and my other sister-in-law here and some girls that was with us. We was smoking and talking.

The COURT. About how many people were there?

The WITNESS. There were about seven girls.

The COURT. Seven girls all outside?

The WITNESS. All sitting outside.

The COURT. Did anybody else go in after you went into the house?

The WITNESS. No.

The COURT. Following the men with the guns?

The WITNESS. No.

The COURT. Did any of these people outside go call the police?

The WITNESS. I don't know where they went because they didn't never go back out.

The COURT. I see. All right. They are the only questions that I have.

Any more questions of this witness?

Mr. LUBLIN. No.

The COURT. You may step down, thank you.

Mr. EISMAN. Your Honor, I have two more witnesses who will be brief. I am not going to speak to them but could I just have five minutes?

The COURT. Yes. We will take a five-minute recess.

116 A(recess was taken at 4:00 P.M.)

The COURT. All right, Mr. Eisman.

Mr. EISMAN. We call Santa Santana to the stand.

The COURT. All right, come up here, please. Do we have the interpreter?

All right, here he comes. That's all right.

[TESTIMONY OF SANTA SANTANA]

SANTA SANTANA, sworn.

DIRECT EXAMINATION

By Mr. EISMAN:

Q. Santa, how old are you?

A. 16.

Q. And are you related to the defendant, Dominga Santana?

A. Yes.

Q. And what is the relation?
A. My mother.
Q. All right. Now, on August 16, 1974 were you at 2311 North Fifth Street?
A. I was outside.
Q. O.K. Now, at approximately 7:30 did anything unusual occur?
A. Well, it was, yes, around that time. I was outside, sitting on the steps with the baby next door and a whole bunch of people came up, you know, with guns.
Q. Did they say who they were?
A. No.
117 Q. What did they do?
A. They put a gun on everybody and they just said, "Freeze," and a whole bunch of them started running in the house.
Q. All right. Where was your mother at the time?
A. She was inside, coming outside, in the hallway.
Q. Where inside if you know?
A. She went inside to get a glass of water.
Q. All right. Do you know exactly where she was standing when these police came up?
A. I don't really know because I was standing outside.
Q. O.K. Did you see her outside when the police came up?
A. No.
Q. All right. Now, they said, "Freeze." Then what did they do?
A. They all ran in the house.
Q. Did they have anything in their hands?
A. They had a gun, pointing at everybody.
Q. How were they dressed?
A. They was dressed in regular clothes.
Q. Street clothes?
A. Yes.
Q. When did you find out they were police?
A. Well, I thought they were stick-ups because they ran in the house. There was two of them fighting to go in and I just left.
Q. Where did you go?

118 A. I went to the house next door to take the baby to the girl.
Q. To what?
A. To the girl next door.
Q. And when did you find out that they were police inside?
A. When I came out, they started—the people started saying they were police officers.
Q. That was the first time you knew they were police?
A. Yes.
Mr. EISMAN. I have no further questions.
The COURT. Mr. McBride?
Mr. MCBRIDE. I have no questions.
Mr. LUBLIN. No questions.
The COURT. You may step down, thank you.

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In the Supreme Court of the United States

No. 75–19

UNITED STATES, PETITIONER

v.

DOMINGA SANTANA AND WILLIAM ALEJANDRO

ORDER ALLOWING CERTIORARI. Filed October 14, 1975.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE : 1975